



## UNITED STATES DEPARTMENT OF COMMERCE

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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/892,720	08/09/90	WILLIAM J. HARRIS	SPC 2:9-05

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## EXAMINER

SCHEINPHAN, L.

ART UNIT	PAPER NUMBER
1205	18

DATE MAILED:

08/10/92

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined       Responsive to communication filed on \_\_\_\_\_       This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s),       days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

## Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1.  Notice of References Cited by Examiner, PTO-892.
2.  Notice re Patent Drawing, PTO-948.
3.  Notice of Art Cited by Applicant, PTO-1449.
4.  Notice of Informal Patent Application, Form PTO-152.
5.  Information on How to Effect Drawing Changes, PTO-1474.
6.  \_\_\_\_\_

## Part II SUMMARY OF ACTION

1.  Claims 1-6, 8, 9, 13+14 are pending in the application.

Of the above, claims \_\_\_\_\_ are withdrawn from consideration.

2.  Claims \_\_\_\_\_ have been cancelled.

3.  Claims \_\_\_\_\_ are allowed.

4.  Claims 1-6, 8, 9, 13+14 are rejected.

5.  Claims \_\_\_\_\_ are objected to.

6.  Claims \_\_\_\_\_ are subject to restriction or election requirement.

7.  This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8.  Formal drawings are required in response to this Office action.

9.  The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are  acceptable.  not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

10.  The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_ has (have) been  approved by the examiner.  disapproved by the examiner (see explanation).

11.  The proposed drawing correction, filed on \_\_\_\_\_, has been  approved.  disapproved (see explanation).

12.  Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has  been received  not been received  been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_

13.  Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14.  Other

## EXAMINER'S ACTION

Art Unit 1205

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-6, 8, 9, 13 and 14 are rejected under 35 U.S.C. § 103 as being unpatentable over Chemical Abstracts which teaches salbutamol (albuterol) used to treat asthma and compositions containing same. The determination of a particular isomer to employ would be a matter of obvious alternative to one skilled in the art.

Claims 1-5 rejected under 35 U.S.C. § 103 as being unpatentable over Brittain et al, Hartley et al, Hawkins et al and Buckner et al. for reasons of record as set forth in Paper no. 9 (Office action dated 3/22/94).

Claims 6, 8, 9, 13 and 14 rejected under 35 U.S.C. § 103 as being unpatentable over Brittain et al, Hartley et al, Hawkins et al and Buckner et al in view of Chemical Abstracts for reasons of

Art Unit 1205

record as set forth in Paper no. 9.

Applicants' remarks regarding the prior art rejections supra are not persuasive. The arguments set forth therein have been previously considered and commented upon in the parent application.

Claims 9, 13 and 14 rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 13 and 14 do not have proper antecedent support in claim 9. Amended claim 9 still refers <sup>to</sup> excessively to the R(-) isomer. Claims 9, 13 and 14 are too broad absent recitation of amounts of ingredients present. Applicant's comments that they are not sure what the compositions would be used for is not persuasive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Schenkman whose telephone number is (703) 308-4651.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235.

SCHENKMAN:te  
August 04, 1992

  
LEONARD SCHENKMAN  
EXAMINER  
ART UNIT 125